TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 401.

THE UNITED STATES, APPELLANTS,

vs.

ARTHUR MARTIN.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 401.

THE UNITED STATES, APPELLANTS, vs. ARTHUR MARTIN

APPEAL FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

ARTHUR MARTIN
vs. } No. 7974.
THE UNITED STATES.

Original petition.—Filed Dec. 27, 1873.

To the honorable the chief-justice and judges of the United States Court of Claims:

Your petitioner, Arthur Martin, a citizen of the United States, and a resident of Annapolis, in the State of Maryland, respectfully represents:

1st. That prior to the twenty-fifth day of June, A. D. 1868, he had been employed in the service of the United States as a laborer and engine-driver in the steam-house at the United States Naval Academy, at the price of two dollars and a half per pay; that he continued to be so employed from and after the said 25th day of June, A. D. 1868, until the fifteenth day of October, A. D. 1872, during such portions of each year as the steam apparatus was in use; that prior to the said 25th day of June, A. D. 1868, he was worked twelve hours each day for a day's work.

2d. That on said 25th day of June, A. D. 1868, an act of Congress was passed providing that eight hours should constitute a day's work for all laborers, workmen, and mechanics then employed, or should thereafter be employed, by or on behalf of the United States.

2 3d. That subsequent to the passage of said act, and until the said fifteenth day of October, A. D. 1872, your petitioner was required to work twelve hours each day, or to do one and a half day's work each calendar day during which he was employed, and received therefor wages for but one day's work for each day and a half for which he so employed.

4th. That on the second day of September, A. D. 1873, he presented to the accounting-officers of the Treasury his claim for compensation for one hundred and sixty-five days' work for which payment had been refused, being the amount of extra hours' work between June 25, 1868, and May 19, 1869, at the rate of two dollars and a half per day; that the said accounting-officers allowed his said claim in part, to wit: they allowed and paid him for ten hours instead of twelve hours' work, being one-fourth of a day instead of one-half a day, at $2.50 per day, and he received on such claim the sum of two hundred and five dollars sixty-three cents, being but one-half the amount to which he was justly and legally entitled, and he now claims the balance so disallowed.

5th. That from the said 19th day of May, 1869, to the said 15th day of October, 1872, the number of extra hours worked by him, as aforesaid, amounted in the whole to three hundred and thirty-seven and one-half days, of eight hours each, for which payment was and still is refused, for which he claims that he is entitled to recover at the rate of $2.50 per day, amounting to $843.75.

6th. That your petitioner has at all times borne true allegiance to the United States, and that he has never voluntarily or otherwise aided, abetted, or given encouragement to rebellion against the Government thereof.

Your petitioner, therefore, by reason of the premises, prays
3 judgment against the United States for the said sums of $205.63

and $843.75, amounting in the whole to $1,049.38, being for the extra work required of him over and above the day's work fixed and prescribed by law.

ARTHUR MARTIN.

STATE OF MARYLAND, *Anne Arundel Co.:*

Arthur Martin, being duly sworn, on his oath states that no assignment or transfer of the claim stated and set forth in the said petition has been made, and that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that the facts stated in said petition are true.

ARTHUR MARTIN.

Subscribed and sworn to before me this 23d day of December, 1873.

ROBERT H. WELCH, *J. P.*

Claimant's address: Annapolis, Md.

CHAS. E. HOVEY,
Attorney for Claimant.

4 In the United States Court of Claims, December term, A. D. 1873.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of one thousand and forty-nine dollars and thirty-eight cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed March 20, 1874.

5 In the Court of Claims.

ARTHUR MARTIN
vs.
THE UNITED STATES. } 7974.

At a Court of Claims held at the Capitol in the city of Washington, the 29th day of March, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition be dismissed.

By the court.

A true copy of record.

6 In the Court of Claims.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

At a Court of Claims held at the Capitol in the city of Washington on the 31st day of May, A. D. 1875, it was ordered that the judgment entered herein March 29, 1875, be vacated and set aside, and that judgment be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order and adjudge and decree that the said Arthur Martin do have and recover of and from the United States the sum of one thousand and nineteen dollars and forty-nine cents, ($1,019\frac{49}{100}$.)

By the court.

A true copy of record.

7 In the Court of Claims of the United States, Dec. term, 1874.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

From the judgment rendered in the above entitled cause on May 31, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assist. Atty. General.

Filed July 8, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

8 United States Court of Claims.

ARTHUR MARTIN
vs.
THE UNITED STATES. } Filed March 29, 1875.

FINDING OF FACTS BY THE COURT.

1. In the year 1866 or 1867 the claimant was employed by the foreman of the steam-heating and gas-works at the Naval Academy, at Annapolis, to work for the defendants at $2.50 a day, with the understanding that during the season of steaming, which was from the 1st of October to the 1st of June, his time of labor was to be twelve hours a day. During the seasons of steam-heating he was fireman at the steam-boilers, and at other times he was employed in assisting in repairing pipes, digging, and shoveling, or in ordinary labor and work.

2. In July, 1868, upon the passage of the act constituting eight hours as a day's work for all laborers employed on behalf of the Government, called the "eight-hour law," (15 Stat. at Large, 77,) the claimant and other laborers at said academy spoke about that law to the foreman, who put on an additional man in the gas-works (where the claimant was not employed) and reduced the time of labor of the men in said gas-

works to eight hours a day. Soon afterward the men told him they would rather have half a dollar a day additional than to have the eight hours' work. Admiral Porter, then superintendent of the Academy, was informed of what the men said, and he told the foreman that he would not give more pay, and that if any one would not work the full hours he would put some one in his place. The claimant was present and heard this conversation. Nothing more was said or done in the matter, and the claimant went on with his work, laboring the number of hours per day as before, according to the original understanding.

3. From the 25th of June, 1868, when the eight-hour law passed, to the 19th of May, 1869, when the President's proclamation in relation to said act was issued, (16 Stat. at Large, 1127,) the claimant worked two hundred and thirty-one calendar days, twelve hours each day, and ninety-seven calendar days, eight hours each day. From said 19th of May, 1869, to the time of his final discharge, October 15, 1872, he worked 752½ calendar days, twelve hours each day, and 439½ calendar days, eight hours each day.

4. For all of said labor the claimant was paid at the rate of $2.50 per calendar day, except that, for reasons which do not appear in evidence, he was paid at the rate of $2.25 per day for 74 days of twelve hours each, in March, April, and May, 1870, and for 26 days of eight hours each, in June, 1870. Payments at said rates were made to him at the end of each month during his time of service and were received by him without protest or objection.

5. While the claimant was so employed the pay of ordinary laborers at the academy was $1.75 a day; and the firemen were paid $2.50 a day because the time was longer and the work harder. The wages of firemen in the works of the gas company, a private corporation, at Annapolis, has since the war been $2 a day of twelve hours' labor, and they had more work to do than the claimant had while similarly employed by the defendants.

9 6. In the year 1873 the claimant made a formal application in writing to the Fourth Auditor of the Treasury for arrears of pay, claimed as due him under the second section of the act of May 18, 1872, (17 Stat., 134,) between the 25th of June, 1868, and the 19th of May, 1869, on account of his said employment. The Auditor thereupon stated the account and allowed the claimant $205.63, which was admitted by the Second Comptroller, and that amount was paid to the claimant, who receipted for the same, in writing, in full of the account.

RICHARDSON, J., delivered the opinion of the court:

The claimant was employed by the defendants' agents as fireman and laborer, at the Naval Academy at Annapolis, at wages of $2.50 per day, with the understanding that, between October and June, his time of working was to be twelve hours each calendar day. During the other months he worked eight hours a day. Such was the petitioner's contract, his work, and his pay when, on the 25th of June, 1868, Congress passed the act (15 Stat., 77,) declaring "that eight hours shall constitute a day's work for all laborers, workmen, and mechanics now employed, or who may hereafter be employed, by or on behalf of the Government of the United States." (Revised Statutes, §3738.)

Upon the passage of that act the petitioner, with other laborers at the academy, applied to the defendants' agents to know what was to be done with reference to it, and was present when it was decided by the superintendent of the academy that the wages would not be increased, and that if any of the men would not work the full hours he would put

others in their places. The claimant thereupon returned to his work and continued so employed until he was discharged, October 15, 1872, a period of more than fifty-one months, laboring each calendar day between October and June twelve hours, and at the end of each and every month, during the whole time, he accepted payment for his month's work at the original contract price, without protest or objection. This acquiescence of the claimant in the terms announced by the superintendent as those upon which alone he could continue in employment, his returning to his work and continuing the same as before, and his accepting $2.50 a day for each calendar day, in monthly payments, for more than four years afterwards constituted, in our opinion, a renewal of the original contract by which he agreed to receive that rate of pay for twelve hours' work.

The question then arises, What is the effect of that act upon a special contract, made since its passage, wherein a laborer contracts to work for the United States twelve hours each calendar day, at a rate agreed upon, and accepts payment each month while in service at the contract rate? We are of opinion that the act has no application to such a case. It does not regulate the compensation to be paid to employés, but leaves that to be determined by the contract of the parties or the rules of law; nor does it place laborers and mechanics under any disability to make contracts, nor prohibit them from working more than eight hours each calendar day; nor in any way prevent them from waiving its intended beneficial provisions. The claimant is entitled to pay for his labor. If he has entered into a special contract, he is bound by the whole of it, and cannot set up part and repudiate the rest. Having agreed to work twelve hours for $2.50, the statute does not operate to increase his pay by one-half for those twelve hours' labor simply because they all come within one calendar day. If it does, then, if a laborer contracts to work six hours a day for $2.50, it would operate to deprive him of one-third of his agreed compensation, and compel him to accept two-thirds in payment of the amount agreed upon. It would be a forced and unreasonable construction, and one which we cannot adopt, to hold that the act so operates upon special contracts as to give to a laborer a rate of compensation one-half greater or to compel him to accept a rate one-third less than that which he contracted for.

The claimant was either employed under a special contract, in which case the contract controls the rate of his pay, and he has been fully paid in accordance with its terms, as we have shown, or he was at work upon an implied contract, in which case he would be entitled to what his services were worth, and the facts show that they were worth no more than he has received. It appears that firemen employed in Annapolis in similar work, laboring twelve hours a day, were paid only $2 a day, while the claimant was receiving $2.50 for like work and the same hours of labor. No evidence is produced that his services were worth more, or that the current rate of pay to others for similar work was greater. Therefore, upon neither the special contract nor a quantum meruit is the petitioner entitled to recover.

But the claimant seeks to recover extra compensation for each day that he worked twelve hours between June 25, 1868, and May 19, 1869, under the provisions of the act of May 18, 1872, directing the proper accounting-officers in the settlement of all accounts for the services of laborers, workmen, and mechanics, between those dates, to settle and pay the same without reduction on account of reduction of hours of labor by the eight-hour law, "when it shall be made to appear that such was the sole cause of the reduction of wages." (Revised Statutes, § 3689, p. 732.)

The claimant's wages and hours of labor remained the same after as before the passage of the eight-hour law. The accounting-officers were made the judges of the fact and the cause of the reduction of wages, when claimed, and were authorized to settle accounts under that act. To them he submitted his claim, and by them it was allowed in part, and the amount allowed was received by the claimant and receipted for by him in full payment of the account. This was a disputable and disputed claim, and the claimant having submitted the same to the officers authorized by law to pass upon and settle it, and having accepted the amount allowed by them and receipted the account in full, he is barred from any further recovery thereon. Comstock's case, (9 C. C. R., 141,) and the cases therein cited; Hancock's case, (9 C. C. R., 400.)

Whatever benefits the eight-hour law might have conferred upon the claimant, while employed at the Naval Academy, he neglected to avail himself of, and has waived and lost by his own acts, and cannot recover in this action.

The claimant's petition is dismissed.

NOTE.—The Chief-Justice was not present when this case was submitted, and took no part in the decision.

NOTE BY THE CLERK.—Subsequently, to wit, on 31st day of May, 1875, the court made an order vacating the above judgment, and directing a pro forma judgment for the purposes of an appeal to be
11 entered in favor of the claimant in the sum of one thousand and nineteen dollars and forty-nine cents, ($1,019\frac{49}{100}$.)

12 United States Court of Claims.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

Request for additional findings on behalf of claimant.

No. 1. At end of 4th finding add "so far as appears by affirmative evidence."

No. 2. In 5th finding, after "because the time was longer & the work harder," add "& required a higher degree of intelligence," (page 30.) Also add at the end of this finding, "but the responsibility in the steam-heating works was greater than in the gas-works, (page 26.)
13 "Claimant was styled engine-tender," (page 25.) The pay of the men employed in the steam-heating works was fixed by Admiral Porter before claimant was employed, (page 24,) and was the same before and after the passage of the eight-hour law, (page 30.)

CHAS. E. HOVEY,
Atty. for Claimant.

Upon the foregoing requests for findings, the court makes the following ruling, to wit:

Number 1. Not allowed. No. 2. Allowed.

By the court.

14 In the Court of Claims of the United States.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

On behalf of the United States the Attorney-General requests the court to find, in addition to the sixth finding, the following fact:

In the investigation of his claim (p. 11 & 15) the complicating evidence was considered by the Auditor, and the question thus presented to him was of more than mere calculation, involving an exercise of judicial discretion.

And he will ever pray, &c.

JOHN GOFORTH,
Asst. Atty. Genl.,
Per J. S. BLAIR.

15 Upon the foregoing request for findings, the court makes the following rulings, to wit:

Not allowed.

By the court.

16 In the Court of Claims.

ARTHUR MARTIN
vs.
THE UNITED STATES. } No. 7974.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office July 8, 1875, and of the order of the chief-justice of said court, allowing the same, of the findings of fact by the court, of the opinion of the court, of the requests for additional findings of fact by the claimant and the defendants, and the rulings of the court thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this seventh day of September, A. D. 1875.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) Court of Claims. No. 401. The United States, appellants, vs. Arthur Martin. Filed 6th October, 1875.

In the Supreme Court of the United States.

UNITED STATES, APPELLANTS,
v.
ARTHUR MARTIN.
} No. 401.

APPEAL FROM THE COURT OF CLAIMS.

SUBMITTED ON BRIEFS UNDER RULE XX.

Brief for Appellants.

In the Supreme Court of the United States.

THE UNITED STATES
vs.
ARTHUR MARTIN.
No. 401.

APPEAL FROM THE COURT OF CLAIMS, SUBMITTED UNDER RULE XX.

BRIEF FOR APPELLANTS.

This is one of a large class of cases pending in the Court of Claims which owe their origin to the act of Congress of June 25, 1868, (15 St. L., p. 77.) The act reads as follows:

"*Be it enacted*, &c., That eight hours shall constitute a day's work for all laborers, workmen, and mechanics now employed, or who may be hereafter employed, by or on behalf of the Government of the United States; and that all acts and parts of acts inconsistent with this act be, and the same are hereby, repealed."

After the passage of the act, Arthur Martin worked at the Naval Academy, at Annapolis, 983½ days of twelve hours each, receiving for each calendar day a sum certain. He filed his petition in the court below to recover 50 per cent. on the sum so received, by reason of the four hours' labor performed by him each day in addition

to the eight hours prescribed by statute. The Court of Claims rendered judgment *pro forma* in his favor for $1,019.49, and the United States ASSIGN FOR ERROR—

I. That the court below erred in entering judgment for $1,019.49.

II. That the court below erred in not dismissing the petition.

ARGUMENT.

This claim divides itself into two branches: for labor performed between June 25, 1868, and May 19, 1869, and for labor performed between May 19, 1869, and October 15, 1872.

I.

That the act of 25th June, 1868, was one that could be waived by the laborer, lies at the very foundation of the defendant's case; for if the law was mandatory, all work additional to the eight hours per day was illegal, and would not support an action on the *quantum meruit*. If compulsorily extorted, it would be a tort. The question for the determination of the court, then, is, did this defendant, by failure at the proper time to claim the protection of the law, or by any overt act, waive its benefits?

And, first, it is to be noticed that the employment of the defendant was *de die in diem*, so that his connection with the Government might have been determined at the close of any day, and at the will of either party.

NOTE.—The statutes and proclamations referred to are set out in full in an appendix to this brief. No statutes regulating the compensation of workmen for the Goverment can be found except those elating to navy-yards, which are also set out in full.

When the act of June 25, 1868, was passed, he was receiving $2.50 for each calendar day, his working-hours being 8 per day during four months of the year, and 12 per day during the remaining eight months; but the compensation did not vary with the change in hours of employment. No change was made either in his compensation or hours of labor upon the passage of the law, and soon afterward Admiral Porter, then superintendent of the academy, announced in the hearing of defendant that he would not increase the pay, and if any one would not work the full hours, he would put some one in his place. The defendant resumed his work, and no change was ever made in his hours of labor, nor (as far as this case is concerned) in his pay. He received his pay at the end of each month, without protest or objection. (Record, p. 4, finding 4.)

This defendant, it would appear, was not affected by the act until the 1st of October, 1869; when he had completed eight hours' labor on that day, had he desired the benefit of the act, he should have stopped work. Having failed to do this, and no one in authority having asked him to labor longer, the "*special instance and request of defendant*," which is an essential element in an action on the "*quantum meruit*," is gone. The labor for the next four hours became that of a volunteer, or else was performed under an implication that he waived the benefit of the eight-hour law, and accepted his *per-diem* pay as adequate compensation for all the labor he performed during the calendar day. Having thus performed the extra four hours' labor each day, at the end of the month he received his pay at the same rate as he had done for the October preceding, and accepted it without objection or protest.

If the defendant entered upon the next month's work with the idea that he would work twelve hours per day, receive the compensation only in payment of eight hours' labor, and reserve to himself the right to bring an action for the extra four hours, he contemplated a fraud if he failed to communicate his purpose in some way to his employers. What they conceived his contract to be was apparent from the pay allowed him at the end of the first month, and his acceptance of this pay at that time was acquiescence in their construction until in some open and formal way he signified that it was different from his own. But he never protested against the last four hours of labor; never objected to the amount paid him at the end of each month; never indicated to any one that he was working under two contracts, one express and the other implied, and only claimed the benefit of the eight-hour law after he had left the service, and then in the shape of extra compensation instead of relief from labor. There cannot be any implied contract where an express one exists relating to the same subject-matter, like that here relating to Mr. Martin's labor for the Government at the Naval Academy.

If, on the other hand, the labor performed each day, after the expiration of eight hours, was not that of a volunteer, it was because Admiral Porter had announced that any man who did not work the full hours for the old pay would be dismissed. This announcement acquiesced in, followed by receipt without protest, and by defendant remaining in the service, constituted of itself a special contract and a waiver of the act of June 25, 1868.

He knew that the Government claimed to have his twelve hours' work for the compensation he received;

and that if he asserted any right to more, it was denied. Knowing it to be a disputed claim, he received and receipted for the sum paid in full of all indebtedness, and cannot now be heard to assert any liability as still outstanding. He received it, knowing that the United States relied upon it as a payment in full.

Having received upon this claim a large sum, intended by the United States as a payment in full, and acquiesced in by him, he thereby tacitly conceding that it was so paid and received, he has no right now to annul and rescind that adjustment without returning to the Treasury the money disbursed therefrom solely upon the supposition that the settlement was final. This was an entire contract for services on the one part and a stipulated daily compensation on the other. If he proposes now to litigate its terms, he must first place the parties *in statu quo*, by a refund of what he has already received. Potter *v.* Monmouth Ins. Co., 63 Maine, 441; Bisbee *v.* Ham, 47 Maine, 543, and books *passim*.

The eight-hour law, so far as the officers of the Government were concerned, was merely directory; it had no bearing on the defendant, except when he was employed by or on behalf of the Government, and then only so far as it formed a part of his contract.

The proclamation of the President of 19th May, 1869, (16 St. L., 1127) which was as follows: "I do hereby direct that from and after this date no reduction shall be made in the wages paid by the Government by the day to such laborers, workmen, and mechanics, on account of such reduction of the hours of labor," also was directory to the officers of the Government; and while we might well argue that it would have no effect on contracts made thereafter with laborers, by which

they agreed to receive a reduced price for their work we go still further, and say that it had no application whatever to the defendant, who, at the time, was working for an unusual number of hours at a price which he consented to receive for his services, whose wages were not reduced on the first of June following, when his hours were reduced to eight, nor increased in October, when he resumed the twelve hours' work.

In point of fact, after the passage of the eight-hour law, in some of the workshops of the Government, two courses were adopted, which seemed to render the law of no practical benefit to the workmen. One was to allow the laborers to work ten or twelve hours per day, and receive their former pay, the employés being at liberty to quit the service the moment they were dissatisfied with it, and the other was to conform to the act and reduce the pay according to the number of hours taken off. It was against the latter plan that the proclamation was directed, the right of the employé to work as many hours beyond eight *per diem* as he chose, for such price as he was willing to receive for his labor, being left undisturbed. Similarly of the proclamation of May 11, 1872, (17 St. L., 955.)

Section 2 of the act of May 18, 1872, which provides for *payment by the accounting-officers of all employés between the 25th of June, 1868, and May 19, 1869, without reduction on account of reduction of hours of labor by said act, (of 25th June, 1868,) when it shall be made to appear that such was the sole cause of the reduction of wages*, is limited in its application to a specified period, and, like the proclamations, ignored those men who superseded the act by consenting to work more than the eight hours.

The foregoing views, we think, are sustained by the case of Luske *v.* Hotchkiss, 37 Connecticut Reports, 219.

We think, therefore, that the act of June 25, 1868, conferred on defendant no right of recovery for any extra labor performed after its passage.

II.

It follows, therefore, that whatever compensation the defendant is entitled to for super-legal labor, between June 25, 1868, and May 19, 1869, is derived from the second section of the act of May 18, 1872.

a. As before stated, we think this act has no application to his case.

b. By the sixth finding of the Court of Claims, it appears that his claim, under this act, was submitted to the Fourth Auditor of the Treasury, and the amount found due him by the Auditor and admitted by the Second Comptroller was paid, and *receipted for in full.*

JUDGMENT.

If the court sustain the first point of this argument, but hold that defendant under the act of May 18, 1872, acquired a right to extra compensation, which the accounting officers have not fully satisfied, and which claimant has not forfeited, the judgment for plaintiff below should be $83.12.

If the court sustain the second point but reject the first, judgment should be for $936.37.

If the court sustain both points, the petition should be dismissed.

EDWIN B. SMITH,
Assistant Attorney-General.

JOHN S. BLAIR.

APPENDIX.

STATUTES AND PROCLAMATIONS.

Act of June 25, 1868, (15 St. L., 77, chap. lxxii.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That eight hours shall constitute a day's work for all laborers, workmen, and mechanics now employed, or who may hereafter be employed, by or on behalf of the Government of the United States; and that all acts and parts of acts inconsistent with this act be, and the same are hereby, repealed.

Approved June 25, 1868.

Act of May 18, 1872, (17 St. L., 122, chap. clxxii, § 2 p. 134.)

SEC. 2. That the proper accounting officers be, and hereby are, authorized and required, in the settlement of all accounts for the services of laborers, workmen, and mechanics employed by or on behalf of the Government of the United States, between the twenty-fifth day of June, eighteen hundred and sixty-eight, the date of the act constituting eight hours a day's work for all such laborers, workmen, and mechanics, and the nineteenth day of May, eighteen hundred and sixty-nine, the date of the proclamation of the President concerning such pay, to settle and pay for the same, without reduction on account of reduction of hours of labor by said act, when it shall be made to appear that such was the sole cause of the reduction of wages, and a sufficient

sum for said purpose is hereby appropriated out of any money in the Treasury not otherwise appropriated.

* * * * * * *

Approved May 18, 1872.

Proclamation of May 19, 1869, (16, St. L., p. 1127.)

No. 3.

By the President of the United States of America:

A PROCLAMATION.

Whereas the act of Congress, approved June 25, 1868, constituted on and after that date eight hours a day's work for all laborers, workmen, and mechanics employed by or on behalf of the Government of the United States, and repealed all acts and parts of acts inconsistent therewith:

Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby direct that, from and after this date, no reduction shall be made in the wages paid by the Government by the day to such laborers, workmen, and mechanics on account of such reduction of the hours of labor.

In testimony whereof I have hereto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

U. S. GRANT.

By the President:

[L. S.] HAMILTON FISH,
Secretary of State.

Proclamation of May 11, 1872, (17, St. L., 955.)

No. 10.

By the President of the United States of America:

A PROCLAMATION.

Whereas the act of Congress, approved June 25, 1868 constituted, on and after that date, eight hours a day's work for all laborers, workmen, and mechanics employed by or on behalf of the Government of the United States;

And whereas on the nineteenth day of May, in the year one thousand eight hundred and sixty-nine, by executive proclamation, it was directed that from and after that date no reduction should be made in the wages paid by the Government by the day to such laborers, workmen, and mechanics on account of such reduction of the hours of labor;

And whereas it is now represented to me that the act of Congress and the proclamation aforesaid have not been strictly observed by all officers of the Government having charge of such laborers, workmen, and mechanics:

Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby again call attention to the act of Congress aforesaid, and direct all officers of the executive department of the Government having charge of the employment and payment of laborers, workmen, or mechanics, employed by or on behalf of the Government of the United States, to make no reduction in the wages paid by the Government by the day to such laborers, workmen, and mechanics on account of the reduction of the hours of labor.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

U. S. GRANT.

By the President:

[SEAL.] HAMILTON FISH,

Secretary of State.

Act December 21, 1861. (12 St. L., 330, § 8.)

SEC. 8. *And be it further enacted*, That the hours of labor in the navy-yards of the United States shall be the same as in the private ship-yards at or nearest to the port where such navy-yard is established, and the wages to be paid to all employés in such yards shall be, as near as may be, the average price paid to employés of the same grade in private ship-yards or workshops in or nearest to the same vicinity, to be determined by the commandant of the yard.

Approved, December 21, 1861.

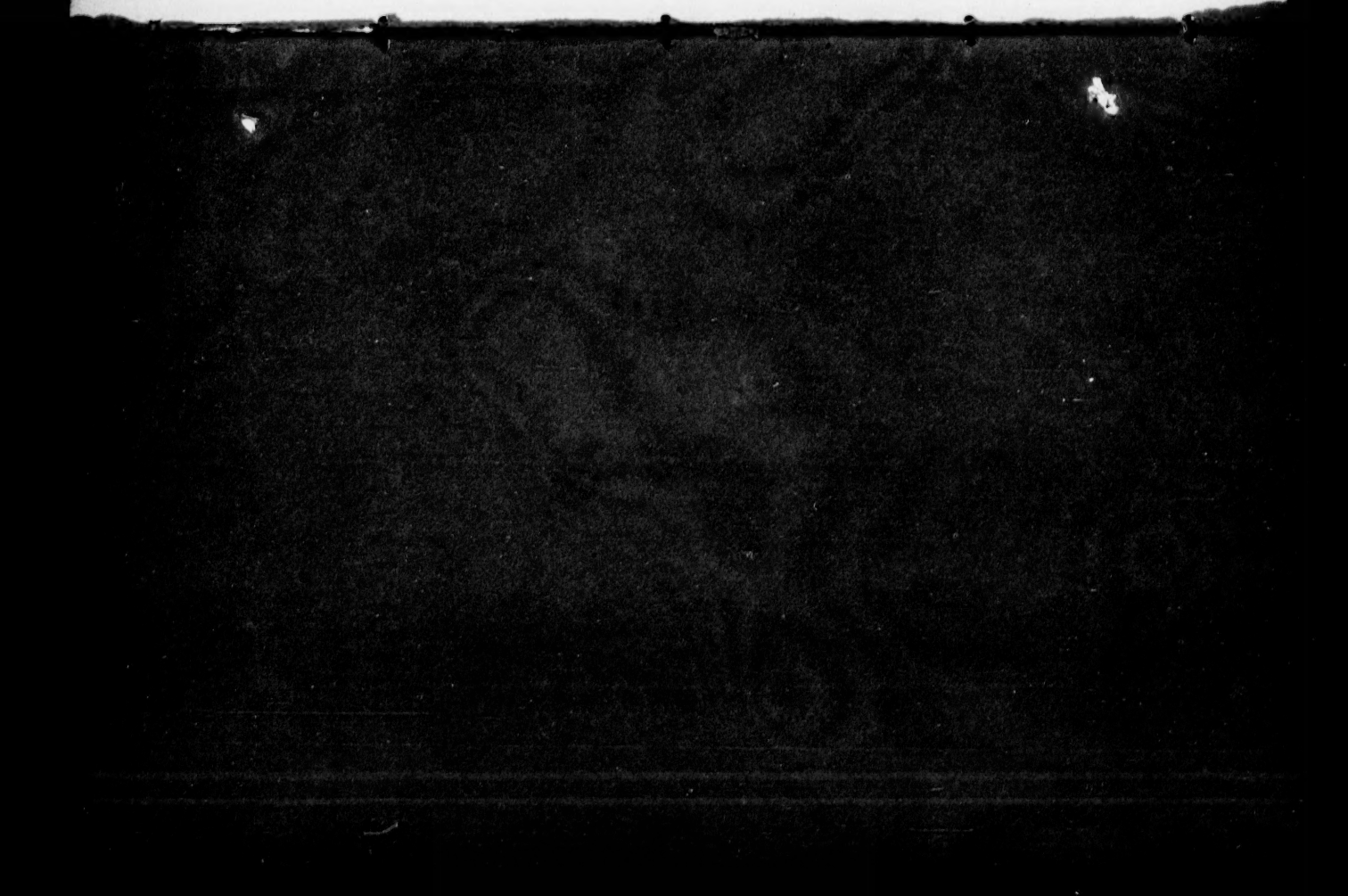
Act of July 16, 1862. (12 St. L. 587,) chap. clxxxiv.

CHAP. CLXXXIV.—An act to amend an act entitled "An act to further promote the efficiency of the Navy," approved December twenty-first, eighteen hundred and sixty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eight of an act to further promote the effi-

ciency of the Navy, approved December twenty-first, eighteen hundred and sixty-one, be amended so as to read as follows: That the hours of labor and the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards, to be determined by the commandants of the navy-yards, subject to the approval and revision of the Secretary of the Navy.

Approved, July 16, 1862.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, Appellants,
vs.
ARTHUR MARTIN.

No. 401.

BRIEF FOR APPELLEE.

The claimant on and prior to the 25th of June, 1868, had been employed by and on behalf of the United States as a laborer at the Naval Academy at Annapolis, at a compensation of $2.50 per day, which was paid him without reference to the number of hours during which he was employed; that is, he received the same compensation for each calendar day, whether in the winter when employed 12 hours, or in the summer when employed less hours. (1st finding, Record, p. 3.)

June 25, 1868, Congress passed an act declaring "that eight hours shall constitute a day's work for all laborers and mechanics *now employed* or who may be hereafter employed by or on behalf of the Government of the United States, and that all acts and parts of acts inconsistent with this act be and the same are hereby repealed." (15 Stat., 77.)

This act does not undertake to interfere with or change the rate of wages or price to be paid per day. Various efforts had been made by the laborers employed by the Government and by private parties to have the hours of labor fixed by law, and this act was the assent of Congress to these demands on the part of the Government. It was claimed that in a given period the laborer could and would perform as much

labor working eight hours per day as he would if worked the then ordinary number of hours. Whether this was sound or not, it would not have been much of a concession or benefit to the laborer if Congress had said, we will reduce the hours of labor, but in consideration thereof we will also reduce your wages in the same proportion.

The simple and clear declaration of the statute was that thereafter eight hours of work should constitute a day's labor. Whatever might be the rate of wages per day, when thereafter any laborer or mechanic had performed his eight hours of work, he became and was entitled to his per diem compensation for a day's work. The measure was by hours and not by calendar day, and by that measure three working days might be included in one calendar day. Under this law, the same person when working extra hours in any emergency might be and I understand has been paid for one and a half or even two days' work performed on the same calendar day.

But it would seem that then, as now, certain subordinate officers of the Government having charge of such laborers and mechanics felt it to be their duty instead of obeying the law to evade it; and on May 19, 1869, the President issued his proclamation calling attention to the law, and forbidding any reduction to be made in the rate of wages to such laborers, workmen, and mechanics on account of such reduction of the hours of labor, (16 Stat., 1127;) and May 11, 1872, it having been represented to the President that the act of Congress and former proclamation had not been obeyed by the officers of the Government, a new proclamation was issued repeating the former direction, (17 Stat., 955;) and May 18, 1872, Congress by law directed the accounting officers to settle all accounts for services of laborers, workmen, and mechanics employed by or on behalf of the Government of the United States, between the passage of the act and the 19th of May, 1869, and pay the same without deduction on account of reduction of the hours of labor by said act, when it should be made to appear that such was the sole cause of

the reduction of wages, and appropriated a sufficient sum for that purpose. (17 Stat., 134.)

Here is an authoritative construction of the act, a distinct executive and legislative declaration that any reduction of the per diem compensation on account of the reduction of the hours of labor by the act was unauthorized and illegal.

The subordinate officers having charge of these laborers, workmen, and mechanics were bound by the law and the orders of the executive made in pursuance thereof. They had no power to change the rate of pay per day on account of the reduction in hours for labor made by the statute, neither could they set up another standard for a day's work. Such acts would have been in violation of the law, and an express violation of the orders of their superior officers.

Now if the rate of pay could not be reduced on account of the reduction of the hours of labor, that result could not be secured by indirection. If the act was intended for the benefit of the laborer, the result is the same whether you reduce his pay in proportion to the number of hours taken off by the statute, or compel him to work more than the statute day for a day's wages. No benefit accrues to him.

From the facts found it would appear that the academic authorities, who are officers of the U. S. navy and bound to obedience to the orders of the President, who is their chief, in the gas works where claimant was not employed, employed an additional man and made the hours of labor conform to the requirements of the statute; but in the branch where the claimant was employed they did not so reduce the hours as to conform to the law, but continued to require him to work twelve hours per day at the same wages—that is, they required him to perform a day and a half of labor for one day's wages, and this in defiance of the express order of their commander-in-chief. When the claimant and his co-laborers were informed of the act passed by Congress, and claimed their rights under it, they were curtly informed that if they did not submit they would be discharged. They did submit to this illegal order for the time, and this is what is

called in the statement of facts, going on with his work according to the original understanding, (Record, p. 4, 2d Finding,) and in the argument of the learned attorney in the court below, an express renewal of the original agreement.

The Government employed different classes of laborers, doing different kinds of work, and paying them various rates per day. That the time during which this claimant was employed was not an element upon which his compensation was fixed, is evidenced by the fact that he received no more while employed twelve hours each calendar day from October 1 to June 1, than he did when working less hours, from June 1 to October 1. Prior to 1868 there was no law regulating the number of hours which should constitute a day's work, but the matter was left practically in the discretion of the officers in charge. The act of 1868, however, did set up such a standard, and all officers of the Government became bound to conform their practice to it.

If the fact that any laborer had worked more than eight hours per calendar day is to be taken as evidence of a special contract which would take the case out of the statute, of what effect was the act? Suppose that after the passage of the act the officer in charge had said to the claimant, the act reduces your time from twelve to eight hours, and, in consequence, I shall reduce your per diem pay one third, and if you don't see fit to submit to this I will put another in your place, and he does submit to what he considers superior power—is this submission under a threat of dismissal to be taken as evidence of a renewal of an old understanding, or a new special contract, to which the statute does not apply? If the fact that under such circumstances he continued to work twelve hours at the same compensation is evidence of such a special contract, so also is the fact that he continued to work only eight hours at a reduced compensation, and the statute becomes wholly inoperative.

Another fact is to be considered. The per diem compensation received by claimant was not fixed with any reference to him or his employment, but was fixed before he was em-

ployed at all. (Record, page 6, additional finding 2.) There was, at that time, no law defining what should constitute a day's work. The price was fixed by the Government at $2.50 per calendar day. Now whether the acceptance of this position by the claimant constituted a special contract or not, if Congress had the power to pass the act of 1868, and define what service should constitute a day's work, by that act, all these contracts of employment were changed, whether special or otherwise. It is not material to this case what was paid any other person for similar or dissimilar service by the Government. Nor is the fact that private persons paid a less price for similar services of the slightest consequence in this case. The Government had determined that the services performed by claimant were worth $2.50 per day, and they then went further and defined what should constitute a day. They had agreed to give him $2.50 per day and then provided by law that eight hours work should constitute a day. When the claimant had performed his eight hours work he became and was entitled to his $2.50, and for 12 hours work he was entitled to pay for a day and a half; any other construction is an evasion of the law, and makes the enactment a mere subterfuge unworthy of any legislative body.

For each eight hours labor performed by claimant the United States became indebted to him for the price of a day's labor. A partial payment, or the fact that for some reason Congress had made no appropriation out of which it could be paid, or had made an insufficient appropriation cannot bar the claim. The want of an appropriation or an insufficient one might prevent the payment of the claim for the whole or a part of the time, but does not cancel the indebtedness; and twelve hours work being admitted, it is difficult to conceive upon what principle the accounting officers could pay for two of the extra hours and not for the other two. (6th finding, Record p. 4, and p. 1.)

This claimant signed the same receipts and pay-rolls that all other laborers did, and is in no different position in this

respect. If the signing of such pay-roll was a bar in the one case it was in all others. The right to object, if such right existed, has been waived by the Government, and the larger portion of these laborers have been paid their per diem for eight hours work as provided by the act; and now the attempt is made to defeat the claims of the small number remaining, by mere technicalities and this new and late doctrine of special contract. The Government of the United States may be clothed with power and dignity enough to sustain such a defense against a mere laborer, but no private individual has enough of either to cover the nakedness of such injustice, to call it by no harsher name.

The claimant did make application to the accounting officers of the Treasury for arrears of pay. That application, under the act of 1872, was limited, or the accounting officers confined their action to the time between June 25th, 1868, and May 19th, 1869. The facts before the accounting officers were the same as here—that claimant had worked 12 hours per calendar day for a portion of said time. For some reason the Comptroller allowed him for 10 hours per calendar day, but declined to pay for the other two hours, and the account was stated for two hours extra per day only, and for this account so stated the receipt was given; and for the remaining two hours, between these dates, and for the extra time subsequent, the claimant immediately thereafter filed his petition in the Court of Claims, and this is what is called the settlement of a disputed and disputable claim, which is to bar this claim. (Record, p. 6.)

The action of the accounting officers was limited to the time between June 25, '68, and May 19, '69, while this claim covers not only that time, but a much longer period, and if the receipt of the amount then allowed is in any sense a bar, it is a bar for that time only; but we submit that, under the circumstances, it is no bar for any part of the time.

It is said, in the opinion of the Court below, (Record, page 6,) that "the accounting officers were made the judges of the fact and the cause of the reduction of wages." If so, then

the fact that this claimant's wages were reduced upon the sole cause of the reduction of hours by the act, must be taken to have been found, otherwise *no* allowance could have been made; and that fact appearing, he was as conclusively entitled to pay for four hours as for two.

Whether this reduction was direct or indirect is of no consequence, if the fact has been so found, and this is an answer to this special contract doctrine.

In the opinion of the Court below (Record, page 4) it is said that after the passage of the act, the petitioner, with other laborers, applied to defendant's *agents* to know what was to be done in reference to it, and was present when it was decided by the superintendent of the Academy that the wages would not be increased. With all due deference, we submit that the question was not as to whether the wages were to be increased, but whether the defendant's agents would comply with the law of Congress fixing what constituted a day's work, and these agents, it seems, determined to set themselves above the law, and decided that these laborers should receive but a day's pay for a day and a half's work, which was an effectual reduction of one-third of the compensation they were entitled to, and this was enforced by a threat of dismissal.

This was a clear evasion of the law, for which the agent had no shadow of authority. It was the agent's duty to obey, and not attempt to set aside a statute provision. We prefer not to attempt to characterize the doctrine that such an act can be made the foundation of a valid and legal special contract which is to override a specific statute provision.

CHAS. E. HOVEY,
Attorney for Appellee.